



State of Arizona  
**Department of Education**

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Superintendent of  
Public Instruction

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CN# 13-03

To: Administrators, National School Lunch and Breakfast Programs

From: Lynne Dulin, Director of Student Services

Subject: Policy Clarifications

Recently, ADE held its first "Preparing for your NSLP Review" training. The training was well attended and a number of questions regarding policies were raised. The purpose of this memorandum is to clarify policies with the following regulations: Foods of Minimal Nutritional Value, Serving a Variety of Milk, Civil Rights Compliance, and NuMenus Menu Planning.

**Foods of Minimal Nutritional Value**

Previous memorandums (CN-14-01 and CN-11-03) have been issued regarding Competitive Food Services and Foods of Minimal Nutritional Value (FMNV) regulations under 7 CFR, section 210.11. ADE's policy on 7 CFR, section 210.11 states that FMNV may not be sold or given away in the food service area.

The term "food service area" is defined as any area on school premises where program meals are both served and eaten, as well as any areas in which program meals are either served or eaten. "Eating areas" that are completely separate from the "serving lines" are considered part of the food service area. Schools may not design their food service area in such a way as to encourage or facilitate the choice or purchase of FMNV as a ready substitute for, or in addition to program meals. The following scenarios may help your food service to define this policy.

**Q:** During the lunch hour our school operates open campus where students are allowed to leave campus or gather anywhere on campus. Is the sale of FMNV prohibited for the entire campus?

**A:** Yes. If program meals can be eaten anywhere on campus, the sale of FMNV is prohibited anywhere on campus.

**Q:** Our school does not operate open campus, but students are allowed to eat their lunch anywhere on campus. Does our food service have to insure that FMNV are not sold during the lunch hour on the entire campus?

**A:** Yes. If program meals can be eaten anywhere on campus, the sale of FMNV is prohibited anywhere on campus.

### **Foods of Minimal Nutritional Value Continued**

**Q:** Our school has a food service area, and it is monitored to ensure students with a reimbursable meal cannot enter the a la Carte sales area where FMNV are sold and vice versa. If we monitor access to FMNV, are we in compliance with the policy?

**A:** No, monitoring access to FMNV is not in compliance with the policy. Monitoring access forces student to make a choice between program meals and FMNV. This practice is prohibited. Schools may not design their food service area in such a way as to **encourage or facilitate the choice or purchase** of FMNV as a ready substitute for, or in addition to program meals.

**Q:** Other entities, not our food service, sell FMNV on our campus where students may eat their program meals. Does this violate the policy?

**A:** Yes. This is a violation of the policy, regardless of who is selling the FMNV. Students are still able to purchase these items within the food service or eating area, which is prohibited.

### **Serving a Variety of Milk**

Schools on the NSLP must offer a variety of fluid milk to students. A variety of milk is defined as two or more types of milk. According to 7 CFR Ch.11 (I), the selection of the types of milk shall be consistent with the types of milk consumed in the previous year; however, if one type of milk represents less than 1% of the total amount of milk consumed in the previous school year, a school may elect to not offer this type of milk. In this case, the school may choose another type of milk to replace this type.

**Q:** Can I add a third option of milk?

**A:** Yes, you can always add additional types of milk to your milk selection.

**Q:** Is serving skim milk and 1% white milk considered a variety of milk?

**A:** Yes, this is considered a variety of milk.

**Q:** Can we offer chocolate or other flavored milks?

**A:** Yes, flavored milks may be offered to your students. As long as the flavored milk is fluid milk it can be counted as the milk component. Milkshakes and other milk products may not be considered the milk component offered to the students.

### **Civil Rights Compliance**

**Q:** Is it required for our program to make menu substitutions for disabled students?

**A:** If a student is disabled and their disability restricts their diet, then yes, according to 7 CFR Part 15b and the *CNP Guidance Manual* (4.6), substitutions must be made for these participants. For disabled students, a licensed physician must make the determination of whether or not a participant has a disability that restricts his or her diet. The physician's statement must be kept on file in the school. Your school may use the sample Medical Statement Form, Exhibit J, in the *CNP Guidance Manual*.

**Q:** Can I charge more for these meals that require menu substitutions?

**A:** No, there can't be an additional charge to the child for the substituted food.

**Q:** Is it required for our program to make menu substitutions for a non-disabled student?

**A:** If a non-disabled student has a medically certified special dietary need that is not life-threatening, a school district is highly recommended to make food substitutions for this child; however, it is not required. In these cases, a recognized medical authority such as a physician, physician assistant, nurse practitioner, registered nurse, or registered dietitian can provide a supporting statement.

### **Civil Rights Compliance Continued**

**Q:** Is it required for our program to make menu substitutions for a non-disabled student who has a severe, life-threatening allergy (*i.e. peanuts, corn, gluten*)?

**A:** Yes, according to the manual, *Accommodating Children With Special Dietary Needs in the School Nutrition Programs*, when a licensed physician determines that the allergic reaction is life-threatening (*i.e. an anaphylactic reaction*), the child's condition would meet the definition of "disability," and the substitutions prescribed by the physician must be made.

For more information, refer to *Accommodating Children With Special Dietary Needs in the School Nutrition Programs* that can be downloaded off the following website. [www.ade.az.gov/health-safety/cnp/nslp/GuidanceManual](http://www.ade.az.gov/health-safety/cnp/nslp/GuidanceManual)

### **NuMenus Menu Planning Option**

**Q:** On NuMenus, can our CNP analyze breakfast and lunch menus separately?

**A:** According to page 4.2 in the *Child Nutrition Programs Guidance Manual*, the Breakfast menus may be averaged with the lunch menus or they may be analyzed separately. For the purpose of the School Meal Initiative Review by the Child Nutrition Programs, however, the breakfast and lunch menus will be analyzed together, giving more flexibility for the schools to meet the dietary guidelines. With the NuMenus option, sponsors are required to analyze their menus with USDA-approved computer software. All foods served in the meal, including condiments, are incorporated into the analysis.

Please contact one of our specialists if you have questions regarding the memorandum.

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